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April 26, 2023

**VIA CM/ECF**

Honorable Leslie G. Foschio  
United States Magistrate Judge  
Western District of New York  
2 Niagara Square  
Buffalo, New York 14202

**Re: Metzgar, et al. v. U.A. Plumbers and Steamfitters Local No. 22 Pension Fund, et al.  
Case No.: 1:17-cv-00726 (JLS/LGF) ("Metzgar II")**

**Status Update**

Dear Magistrate Judge Foschio:

On behalf of Defendants, we submit this letter in response to the Court's April 21, 2023, Text Order. In that Order Your Honor requested a status report regarding issues remaining unresolved in Metzgar II (17-CV-726) in light of the denial of Certiorari in Metzgar I (13-CV-85). Of the seven Causes of Action in the Metzgar II action only three survive, as follows:

4<sup>th</sup> Cause of Action – "Interference with Protected Rights, ERISA Section 410."  
Plaintiffs claim that in settlement negotiations they were allegedly refused settlement of the Fund's recoupment claims on the same terms as were other early retirees who continued their employment. Thus, at issue is what offers, if any, were made during settlement discussions.

5<sup>th</sup> Cause of Action – "Liability for Breach of Fiduciary Duty, ERISA 409(a)."  
Plaintiffs claim that in granting them the early pension benefits they sought Defendant Trustees breached fiduciary duties owed to the Fund. (The pensions were all granted between 2002 and 2009).

6<sup>th</sup> Cause of Action – Declaratory Relief. (This cause of action is duplicative of the other causes of action.)



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The Causes of Action in Metzgar II that are barred by the decision in Metzgar I are the First, Second, Third and Seventh. As to the First, Second, and Third claims, all are based on Plaintiffs' original challenge against the Defendant Trustees' 2011 determination that Plaintiffs were not entitled to early pensions because they never stopped working. Plaintiffs' claims in Metzgar II—as in Metzgar I— are that the Trustees' determination violated the ERISA anti-cutback rule, ERISA 204(g)(1<sup>st</sup> C/A); was a wrongful denial of benefits, ERISA 502(a)(1)(B) (2<sup>nd</sup> C/A); and constituted a breach of the Trustees' fiduciary duty, ERISA 502(a)(3) (3<sup>rd</sup> C/A). This Court, affirmed by the Second Circuit Court of Appeals, dismissed these same claims in Metzgar I, finding that the Trustees' determination was permissible under applicable law and the Plan document. The Supreme Court then denied Plaintiffs' Petition for a Writ of Certiorari. As a result, the First, Second, and Third Causes of Action are all barred by res judicata.

In the Seventh Cause of Action in Metzgar II, Plaintiffs seeks a preliminary injunction stopping Defendants' reduction of Plaintiffs' monthly pension benefits initiated in order to recover the mistaken pension payments made to them. Plaintiffs made the same motion for a preliminary injunction in Metzgar I. This Court denied Plaintiffs' motion; the Second Circuit affirmed; and Certiorari was denied. Thus, the Seventh Cause of Action is also barred by res judicata.

Thank you for your consideration.

Respectfully submitted,

**BLITMAN & KING, LLP**

A handwritten signature in blue ink, appearing to read "Daniel R. Brice".

Daniel R. Brice

DRB:ppn

cc: Christen Archer Pierrot, Esq. (*via CM/ECF*)